

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

RICARDO LARIOS-TRUJILLO,	::	MOTION TO VACATE
Movant,	::	28 U.S.C. § 2255
	::	
v.	::	CRIMINAL ACTION NO.
	::	1:08-CR-446-TCB-LTW-1
	::	
UNITED STATES OF AMERICA,	::	CIVIL ACTION NO.
Respondent.	::	1:12-CV-416-TCB-LTW

ORDER

In 2009, Movant Ricardo Larios-Trujillo was convicted in this Court of conspiracy to possess cocaine with intent to distribute it and attempted possession of cocaine with intent to distribute it. The Court sentenced Larios-Trujillo to twenty years' imprisonment, and his convictions and sentence were affirmed on appeal. *United States v. Larios-Trujillo*, 403 F. App'x 442 (11th Cir. 2010).

In 2012, Larios-Trujillo, pro se, filed a motion to vacate his sentence under 28 U.S.C. § 2255. [359]. He asserted four grounds for relief, including that trial counsel Samuel Fenn Little and appellate counsel E. Vaughn Dunnigan rendered constitutionally ineffective assistance. Magistrate Judge Walker appointed counsel for Larios-Trujillo and conducted an evidentiary hearing on the claim that Little failed to adequately advise Larios-Trujillo about the possibility of pleading guilty. *See* [416]

(transcript of hearing). After reviewing post-hearing briefs, Magistrate Judge Walker issued a Report and Recommendation [421] recommending that Larios-Trujillo's § 2255 motion be denied and that a certificate of appealability be denied. Through counsel, Larios-Trujillo filed objections to the R&R. [426].

A district judge must conduct a “careful and complete” review of a magistrate judge's R&R. *Williams v. Wainwright*, 681 F.2d 732, 732 (11th Cir. 1982). The district judge must “make a de novo determination of those portions of the [R&R] to which objection is made,” 28 U.S.C. § 636(b)(1)(C), while those portions of the R&R for which there is no objection are reviewed only for clear error, *Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006). *See United States v. Woodard*, 387 F.3d 1329, 1334 (11th Cir. 2004) (“District judges do not actually have to exercise de novo review of magistrate judges' decisions, however, unless an objection is made.”).

“Parties filing objections to a magistrate [judge's] report and recommendation must specifically identify those findings objected to. Frivolous, conclusive, or general objections need not be considered by the district court.” *Marsden v. Moore*, 847 F.2d 1536, 1548 (11th Cir. 1988) (affirming denial of habeas relief). Larios-Trujillo's objections are general and conclusory and identify no particular error in the R&R. *See id.* Larios-Trujillo simply “incorporates by reference the arguments made in his Post-

Hearing Brief” and “objects to the Magistrate Judge’s conclusion that the merit of his claims is not reasonably debatable.” [426] at 1-2. A de novo review is not warranted. *See id.*; *Woodard*, 387 F.3d at 1334.

The Court has reviewed the transcript of the evidentiary hearing, the parties’ pre- and post-hearing briefs and the rest of the record in this case. The Court finds no error in the R&R’s findings and conclusions. The evidence presented at the evidentiary hearing amply supports Magistrate Judge Walker’s finding that Little did not render ineffective assistance in connection with Larios-Trujillo’s purported desire to plead guilty. Larios-Trujillo has not shown that Magistrate Judge Walker erred in so finding or in concluding that his remaining claims fail.

Accordingly, the Court **OVERRULES** Larios-Trujillo’s objections [426] and **ADOPTS** the R&R [421] as its opinion. Larios-Trujillo’s § 2255 motion [359] and a certificate of appealability are **DENIED**.

IT IS SO ORDERED this 13th day of January, 2014.



TIMOTHY C. BATTEN, SR.
UNITED STATES DISTRICT JUDGE